

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 EDC 16807

FINAL DECISION

APPEARANCES

For the Respondent: Tiffany Y. Lucas
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602

ISSUE

APPLICABLE STATUTES AND POLICIES

WITNESSES

For Respondent: Toya Kimbrough
 Alvera J. Lesane

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: Exhibits 1 – 2

For Respondent: Exhibits 1 – 12

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the Undersigned makes the following findings of fact. In making the findings of fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witnesses, any interest, bias, or prejudice the witnesses may have, the opportunity for the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witnesses is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Wherefore, the Undersigned makes the following Findings of Fact, Conclusions of Law and Final Decision:

FINDINGS OF FACT

1. N.C. General Statute §115C-296(a) provides, in pertinent part, as follows:

The State Board of Education shall have entire control of licensing all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all licenses... for each grade and type of license which it authorizes.

N.C. Gen. Stat. § 115-296(a)

2. Consistent with its statutory authority to control the licensure process and to set licensure standards and requirements, the State Board of Education (hereinafter the “SBE”) has adopted a policy, TCP-A-004, entitled “Policies on the Beginning Teacher Support Program.” Among other things, Section 4.00 of the policy provides that “[i]nitial (Standard Professional 1) licenses are issued to teachers with fewer than three years of appropriate teaching experience (normally considered to be public school experience) in their initial licensure area. All teachers who hold initial (Standard Professional 1) licenses...are required to participate in a three year induction period with a formal orientation, mentor support, observations and evaluation prior to the recommendation for continuing (Standard Professional 2) licensure.” (Resp. Exhibit 1)

3. Section 4.90 of the policy, entitled “Conversion Process” sets forth the process by which the Licensure Section at the North Carolina Department of Public Instruction (“DPI”) converts a teacher’s initial (Standard Professional 1) license to a continuing (Standard Professional 2) license. Section 4.90 provides, in part, that “[t]he official designated by the LEA in its approved Beginning Teacher Support Program plan is responsible for approving the acceptance of the continuing license issued through this process. If a teacher has not taught three

years, or if the designated official has knowledge of any reason related to conduct or character to deny the individual a continuing license, then the automatic conversion license cannot be accepted.” (Resp. Exhibit 1)

4. In this case, Petitioner was issued a North Carolina Standard Professional 1 (initial) license in August 2009, which was due to expire on June 30, 2012. On or about October 5, 2011, Petitioner’s employer school district, Iredell-Statesville Schools, requested an extension of Petitioner’s initial license through June 30, 2013, in order for him to complete the Beginner Teacher Support Program. The extension request was granted by DPI. (Resp. Exhibits 4, 5; T. pp. 17-20)

5. On or about April 8, 2013, however; during the time that Petitioner held an initial (SP I) license, he was placed on disciplinary suspension without pay by Iredell-Statesville Schools and notified of the school system’s decision to recommend to the local board of education that his employment contract not be renewed. The basis for the suspension and the recommendation not to renew the Petitioner’s employment contract was the Petitioner’s “failure to abide by local and state policy regarding the use of controlled substances and required drug testing” and the “failure to adequately communicate with administration and staff regarding adherence to established policies, as well as [Petitioner’s] attempt to circumvent the process.” Specifically, Petitioner had tested positive for marijuana use and had failed to report for drug testing when first instructed by his school system to do so. (Resp. Exhibits 6, 7, 9, 10)

6. Subsequently, on or about July 1, 2013, Dr. Alvera Lesane, Associate Superintendent of Human Resources at Iredell-Statesville Schools, submitted a recommendation to DPI that Petitioner’s Standard Professional I license not be converted to a Standard Professional II license. (Resp. Exhibit 12)

7. The recommendation not to convert to a Standard Professional II license was based on Petitioner’s failure to successfully complete the evaluation process of the Beginning Teacher Support Program. More specifically, because of concerns raised about the Petitioner’s conduct and character, and consistent with section 4.90 of State Board Policy TCP-A-004, Petitioner’s employing school system was not able to recommend that he be granted a continuing license. (Resp. Exhibit 12; T. pp. 47-49)

8. DPI accepted the local school system’s recommendation that Petitioner not be granted a continuing license and denied the request for conversion from a Standard Professional I license to a Standard Professional II license. The denial was based upon the Petitioner’s failure to complete the Beginning Teacher Support Program as required by Policy TCP-A-004. (Resp. Exhibit 13)

9. Petitioner appealed the decision not to convert his license to the Office of Administrative Hearings.

10. At the hearing in this matter, Petitioner admitted that he tested positive for marijuana use while employed as a teacher at Iredell-Statesville Schools. Petitioner also admitted that he failed to report for drug testing despite being instructed by his employer to

attend. Petitioner also acknowledged that illegal drug use is inconsistent with the North Carolina Code of Ethics for North Carolina Educators. (T. pp. 69, 79-80; Petitioner's Exhibit 1; Resp. Exhibit 2)

11. Dr. Alvera Lesane, Associate Superintendent of Human Resources at Iredell-Statesville Schools, testified that the recommendation not to convert Petitioner's initial license to a continuing license was based on concerns the school system had about Petitioner's conduct and character due to his apparent attempts to avoid drug testing, the positive test result for marijuana use, as well as Petitioner's failure to take full responsibility for testing positive for drugs. (T. pp. 48-49).

12. Toya Kimbrough, a licensure specialist at DPI, testified that DPI's decision not to convert Petitioner's initial license to a continuing license was based on the recommendation and supporting documentation received from Iredell Statesville Schools regarding the Petitioner's positive drug test and the failure to report to drug testing as instructed. (T. pp. 22-23).

CONCLUSIONS OF LAW

1. Teachers are required in this State, both by Rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as a positive role model for children. 16 N.C.A.C. 6C.0602(b)(2); Faulkner v. New Bern-Craven Board of Education, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984)

2. As our Supreme Court observed in Faulkner:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (emphasis added)

3. The burden is on Petitioner to demonstrate, by a preponderance of the evidence, that the Respondent erred in not converting his initial license to a continuing license. Peace v. Employment Sec. Comm'n, 349 N.C.315, 507 S.E. 2d 272 (1988)

4. Petitioner's conduct is not consistent with the high standards of conduct expected of teachers in this State. See Faulkner v. Board of Education, 311 N.C. 42, 316 S.E.2d 281 (1984)

5. Respondent did not act arbitrarily or capriciously in not converting Petitioner's initial license to a continuing license.

6. Respondent did not and has not unlawfully deprived Petitioner of any property to which he is entitled.

7. Respondent has not prejudiced the rights of Petitioner nor acted arbitrarily or capriciously.

Based on the foregoing, the undersigned makes the following:

DECISION

The Petitioner has not met his burden of proof by the preponderance of the evidence and therefore the Petition for Contested Case hereby is **DENIED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or the superior court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision. In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision. Under N.C.G.S. 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 14th day of January, 2014.

Selina M. Brooks
Administrative Law Judge